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3. Mortgages (§ 335*)—Payee Waiving Default in Paying Interest Can Proceed to Foreclose Only on Giving Notice.—Where a payee of a note secured by deed of trust waives a default in paying interest, he cannot again establish his right to foreclose thereunder until he has given due notice of his intentions to the other party.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 89.]

4. Mortgages (§ 335*)—Acceptance of Past-Due Interest Is a Waiver of Right to Foreclose for Default in Payment of Interest.—Where the payee of a note secured by deed of trust, providing that on default of interest the debt shall become payable, accepts the past-due interest, he waives the right to enforce the collection of the entire debt for such default.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 86.]

Appeal from Circuit Court, Culpeper County.

Suit by Oliver Fant against Lucy E. Thomas and others. From decree for defendants, plaintiff appeals. Reversed.

Edwin H. Gibson, of Culpeper, for appellant.

Grimsley & Miller, of Culpeper, for appellees.

THOMPSON et al. v. ARTRIP et al.

Sept. 22, 1921.

[108 S. E. 850.]

1. Appeal and Error (§ 173 (2)*)—Objection to Notice of Termination of Lease Cannot First Be Made on Appeal.—In unlawful entry and detainer proceedings, the objection that the notice to terminate the lease was defective cannot be urged for the first time on appeal.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 539.]

2. Landlord and Tenant (§ 115 (1)*)—Continuance of Possession under Supplementary Agreement Held from Month to Month.—Where, before the expiration of a two-year lease, the parties made a supplementary agreement to give lessees a month or two after expiration to close out their business, and lessees thereafter paid monthly rent, the tenancy was from month to month.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 119.]

3. Contracts (§ 22 (1)*)—Formal Acceptance of Offer Not Necessary.—It is not necessary, in order to make a contract, that a proffer submitted by one party, shall be formally and in terms accepted by the other; an acceptance may be by act.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 325.]

4. Landlord and Tenant (§ 114 (3)*)—Presumption of Yearly Ten-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

ancy Where Tenant for Years Holds Over Rebuttable.—The presumption that a tenant for years who holds over after the expiration of his term, with the landlord's permission, is a tenant from year to year, may always be repelled by evidence that the holding over was of another character.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 332.]

5. Landlord and Tenant (§ 115 (3)*)—Evidence Held to Establish Tenancy from Month to Month.—Evidence, that defendants who had been holding under a two-year lease, continued in possession under a supplementary agreement held to establish a tenancy from month to month.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 122.]

6. New Trial (§ 71*)—Verdict on Conflicting Evidence Should Not Be Set Aside unless Plainly against Evidence.—The verdict of a jury, particularly upon conflicting evidence, is entitled to great respect, and should not be set aside unless plainly against the evidence, or without evidence to support it.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 455.]

7. Landlord and Tenant (§ 116 (7)*)—Notice of Termination Held Not Waived by Collecting Rent.—Collection of rent to the time at which the lease was terminated held not a waiver of the effect of a notice to terminate the lease, given 30 days prior to the end of the month.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 183.]

Error to Circuit Court, Russell County.

Action by B. F. Thompson, executor, and others, against N. D. Artrip and another, doing business as the Lewis Creek Mercantile Company. A judgment of dismissal was entered after setting aside a verdict for plaintiffs and granting a new trial, and plaintiffs bring error. Reversed and rendered.

A. T. Griffith, of Honaker, for plaintiffs in error.

Bird & Lively, of Lebanon, and *G. B. Johnson*, of Honaker, for defendants in error.

CLINCHFIELD COAL CORPORATION *v.* HAYTER.

Sept. 22, 1921.

[108 S. E. 854.]

1. Trespass (§ 46 (1)*)—Verdict for Plaintiff for Injury to Trees Sustained by Evidence.—In an action by a landowner for cutting and branding trees, injuring them, a verdict for plaintiff held supported by evidence.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 322.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.